

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

PETRÓLEOS DE VENEZUELA, S.A., PDVSA
PETRÓLEO, S.A., and PDV HOLDING, INC.,

Plaintiffs and Counterclaim Defendants,

- against -

MUFG UNION BANK, N.A. and GLAS
AMERICAS LLC,

Defendants and Counterclaim Plaintiffs.

No. 19 Civ. 10023 (KPF)

**DECLARATION OF TIMOTHY MCKENNA IN SUPPORT OF MOTION OF
DEFENDANTS AND COUNTERCLAIM PLAINTIFFS FOR ENTRY
OF JUDGMENT DIRECTING PAYMENT OF PRINCIPAL AND INTEREST**

Timothy McKenna declares, under penalty of perjury pursuant to 28 U.S.C. § 1746, as follows:

1. I am an Associate Director of NERA Economic Consulting (“NERA”). I hold a B.A. in economics from the University of Chicago, an M.A. in economics from the University of Pennsylvania, and an MBA specializing in accounting and finance from New York University. My curriculum vitae is attached as Exhibit A. I have been retained as an expert in this matter by Paul, Weiss, Rifkind, Wharton & Garrison, LLP, counsel for MUFG Union Bank, N.A. (the “Trustee”) and GLAS Americas LLC (the “Collateral Agent”). I submit this Declaration in support of the Trustee and Collateral Agent’s motion for entry of judgment pursuant to the Court’s Opinion and Order dated October 16, 2020 (ECF No. 215).

2. I was asked to calculate accrued and unpaid contractual interest on outstanding principal on the 2020 Notes and statutory prejudgment interest thereon. I set forth below my calculations. Attached to this Declaration as Exhibit B is a spreadsheet that I prepared

that shows my calculations. Other professionals employed by NERA assisted me in preparing this Declaration.

3. In preparing my calculations, I have relied on the following facts provided by counsel, which I understand come from the Indenture for the 2020 Notes and each of the Global 2020 Notes, as well as factual findings by the Court in its Opinion and Order dated October 16, 2020 (ECF No. 215) (“Op.”) and undisputed facts set forth in the Trustee and Collateral Agent’s Local Rule 56.1 Statement dated June 10, 2020 (ECF No. 100) (“Tr. 56.1”). I have also relied on legal theories for computation of interest as understood by counsel and referenced in the memorandum of law in support of the Trustee and Collateral Agent’s motion for entry of judgment (“Tr. MOL”). These facts are as follows:

- a. the principal amount outstanding on the 2020 Notes since October 29, 2018 and as of the date hereof is \$1,683,764,500, *see* Op. at 68;
- b. contractual interest accrues at the rate of 8.50% per annum, computed on the basis of a 360 day year of twelve 30-day months (the “Contractual Rate”), *see* Indenture § 2.08(b);
- c. pursuant to the Indenture, contractual interest on outstanding principal is payable semi-annually in arrears on April 27 and October 27 of each year (each an “Interest Payment Date”), or on the date of acceleration of the 2020 Notes if earlier, *see id.* §§ 2.08(b), 5.01(b). I understand from counsel that contractual interest will cease accruing upon entry of a judgment, Tr. MOL at 7–8;
- d. contractual interest accrues from the most recent Interest Payment Date on which the required interest payment has been made until the principal has been paid or

duly provided for or until the Court enters its final judgment, *see* Indenture § 2.08(b);

- e. PDVSA failed to make the required principal and interest payments due on October 27, 2019, and thereafter, Tr. 56.1 ¶¶ 213, 216, 259, 261;
- f. on December 18, 2019, a notice of acceleration was sent to PDVSA causing all principal and the interest accruing since October 27, 2019 to become immediately due and payable, *see* Indenture § 5.01(b), Tr. 56.1 ¶ 271;
- g. statutory prejudgment interest accrues on unpaid contractual interest payments at a simple interest rate of 9.00% (the “Statutory Rate”) from the date on which the interest payment was due until the day on which judgment is entered, *see* Tr. 56.1 ¶ 275; and
- h. PDVSA is liable for these amounts as Issuer of the 2020 Notes, and PDVSA Petróleo is jointly and severally liable as Guarantor, *see* Indenture §§ 5.01(f), 7.01.

I have not relied on additional facts provided by counsel in calculating accrued and unpaid contractual interest and statutory prejudgment interest.

4. I have further assumed for purposes of my computations that judgment will be entered sometime between December 1, 2020 and December 31, 2020. As shown below, I have calculated (a) the amounts due on December 1, 2020 (assuming that judgment is entered on that date), and (b) the daily interest accruing after that date through December 31, 2020. I have therefore calculated the amounts of contractual and statutory prejudgment interest due as of December 1, 2020 in addition to a daily amount accruing from December 2, 2020 to December 31, 2020. For these calculations, I have rounded all sums to the nearest dollar; any apparent

discrepancies herein are the result of such rounding. (The rate of accrual changes slightly after December 31, 2020. This is because 2021 will not be a leap year. In addition, the daily accrual will increase on each subsequent Interest Payment Date on which the interest payment then due is not made).

**Calculation of Accrued and Unpaid Contractual Interest on Unpaid Principal
Through December 1, 2020**

5. As of December 1, 2020, PDVSA and PDVSA Petróleo owe the Trustee the aggregate amount of accrued and unpaid contractual interest of \$228,196,861 on the outstanding principal amount of the 2020 Notes, as set forth in the succeeding four paragraphs.

6. This aggregate amount includes four due and unpaid contractual interest payments, plus interest accrued since the most recent contractual interest payment date. The four due and unpaid contractual interest payments are as follows: (1) interest of \$71,559,991, which accrued from April 27, 2019 until October 27, 2019 and was payable on October 27, 2019; (2) interest of \$20,275,331, which accrued from October 27, 2019 until December 18, 2019, the date on which PDVSA received the notice of acceleration, and was payable on December 18, 2019; (3) interest of \$51,284,660, which accrued from December 18, 2019 until the next biannual contractual interest payment date of April 27, 2020 and was payable on April 27, 2020; and (4) interest of \$71,559,991, which accrued from April 27, 2020 until October 27, 2020 and was payable on October 27, 2020.

7. I calculated these contractual interest payments by multiplying the outstanding principal (\$1,683,764,500) by the Contractual Rate (8.50%), and then multiplying that amount by a fraction representing the part of the year between the previous Interest Payment Date and the current Interest Payment Date, where each month is assumed to have 30 days and the year is assumed to have 360 days, *i.e.*, the 30 / 360 day-count convention. *See* Indenture

§ 2.08(b). Thus, for example, I calculated the amount of interest due on October 27, 2019 (\$71,559,991) by multiplying the outstanding principal (\$1,683,764,500) by the Contractual Rate (8.50%), and then multiplying the result by 0.5, or one-half (representing the half-year period after the prior Interest Payment Date, or April 27, 2019).

8. In addition to the above overdue and unpaid contractual interest payments, counsel has informed me that PDVSA and PDVSA Petróleo will owe the Trustee contractual interest accruing on the outstanding principal on the 2020 Notes at the Contractual Rate from October 27, 2020 through the date of entry of judgment, again computed on the basis of a 360 day year of twelve 30-day months. *See* Indenture § 2.08(b). As of December 1, 2020, I calculated that such accrued contractual interest on outstanding principal will be \$13,516,887, representing the outstanding principal (\$1,683,764,500) multiplied by the Contractual Rate (8.50%) and the fraction of a 360 day year between October 27 and December 1, 2020 (34 days, or 9%).

9. Accordingly, the unpaid contractual interest due as of December 1, 2020 is \$228,196,861, the sum of the four unpaid interest amounts due through October 27, 2020, as shown in paragraphs 6 and 7, and the accrued interest as of December 1, 2020, as shown in paragraph 8.

**Statutory Prejudgment Interest on Accrued and Unpaid Contractual Interest
Through December 1, 2020**

10. Statutory prejudgment interest on overdue and unpaid contractual interest payments began accruing from the date on which each unpaid contractual interest payment was due, at the Statutory Rate (9.00%) on the basis of the actual number of days elapsed since the payment was due. I calculated the accrued statutory prejudgment interest amount on the four overdue and unpaid contractual interest payments described in paragraph 6 above. Based on my

calculations, the Trustee is owed the following amounts of statutory prejudgment interest through December 1, 2020: (1) \$7,059,418 on the contractual interest payment of \$71,559,991 due and unpaid since October 27, 2019; (2) \$1,740,200 on the contractual interest payment of \$20,275,330.85 due and unpaid since December 18, 2019; (3) \$2,749,194 on the contractual interest payment of \$51,284,660 due and unpaid since April 27, 2020; and (4) \$615,885 on the contractual interest payment of \$71,559,991 due and unpaid since October 27, 2020.

11. The aggregate amount of statutory prejudgment interest through December 1, 2020 is the sum of the amounts in the preceding paragraph, or \$12,164,697.

12. Accordingly, through December 1, 2020, the total accrued contractual interest and statutory prejudgment interest due and payable on the 2020 Notes is \$240,361,558 (the sum of \$228,196,861 in accrued and unpaid contractual interest, ¶ 9, and \$12,164,697 in statutory prejudgment interest, ¶ 11).

**Continually Accruing Contractual and Statutory Prejudgment Interest
After December 1, 2020**

13. In addition to calculating accrued and unpaid contractual and statutory prejudgment interest owed to the Trustee through December 1, 2020, I have calculated the amount of additional contractual and statutory prejudgment interest that will accrue each day from December 2, 2020, to the date the Court enters judgment.

14. On the outstanding principal, contractual interest will accrue at the Contractual Rate. Based on my calculations, contractual interest on the outstanding principal will accrue at a daily rate of \$397,556 from December 2, 2020, through December 31, 2020 or the date the Court enters judgment, if earlier. (Daily contractual interest will not accrue at the same rate on each day after December 31, 2020. Under the 30 / 360 day-count convention at which the contractual interest accrues, when the prior month has more than 30 days, there is no

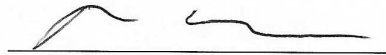
accrued interest on the first day of the next month. This means that no contractual interest will accrue on January 1, 2021, because the preceding month of December has 31 days. Similarly, additional contractual interest accrues on March 1, 2021, because February has fewer than 30 days.)

15. On the overdue and unpaid contractual interest, statutory prejudgment interest will accrue at the Statutory Rate. Based on my calculations, there will be \$52,790 in statutory prejudgment interest on the overdue and unpaid contractual interest accruing each day from December 2, 2020, through December 31, 2020, or the date the Court enters judgment, if earlier. (As noted in paragraph 4, the daily accrual will increase after December 31, 2020, and again on each Interest Payment Date thereafter, if the payments due on those dates are not made.)

16. Combining these amounts, I calculate that the total amount of additional contractual and statutory prejudgment interest accruing each day from December 2, 2020, to December 31, 2020, or the date of entry of judgment, if earlier, is \$450,346.

I declare under penalty of perjury that the foregoing is true and correct.

Executed: New York, New York
November 30, 2020

A handwritten signature in black ink, appearing to read 'Timothy McKenna', is written over a horizontal line.

Timothy McKenna